

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
STATESBORO DIVISION**

GARY D. MULLIS,

Plaintiff,

v.

NATHAN DEAL; HOMER BRYSON;  
STANLEY WILLIAMS; ROY A.  
SABINE; MARCUS OCCHIPINTI;  
DEDRICK ANTHONY; MS. WORTHEN;  
THE STATE OF GEORGIA; and ROBERT  
TOOLE,

Defendants.

CIVIL ACTION NO.: 6:16-cv-100

**ORDER and REPORT AND RECOMMENDATION**

Plaintiff, who is currently incarcerated at Georgia State Prison in Reidsville, Georgia, has filed a cause of action pursuant to 42 U.S.C. § 1983 contesting certain conditions of his confinement. (Doc. 1.) For the reasons that follow, I **RECOMMEND** that the Court **DISMISS** Plaintiff's Complaint **WITHOUT PREJUDICE**, **CLOSE** this case, and **DENY** Plaintiff leave to proceed *in forma pauperis* on appeal.

**PLAINTIFF'S ALLEGATIONS**

Plaintiff asserts a litany of allegations in his Complaint that are at times difficult to decipher and, at best, loosely related to one another. Plaintiff maintains that he is a "political prisoner" and that he was unlawfully prosecuted. (Doc. 1, p. 6.) He also claims that since arriving at Georgia State Prison, various prison officials have disregarded his medical conditions including diabetes and heart problems. (*Id.* at pp. 7–10.) Plaintiff further alleges that while housed at Georgia State Prison, he has been forced to perform "heavy labor." *Id.* He complains

about the conditions of his cell including having two inmates in one cell, flaking paint in the cell, no running water, asbestos falling everywhere, no ventilation, and seeping sewage. (*Id.* at p. 8.) He also contends that he has had to undergo searches while naked, that his property has been destroyed and that his religious freedoms have been violated. (*Id.* at p. 9.) Plaintiff goes on to allege that the prison has “well organized” gangs and that he has been robbed by a fellow inmate and that his life has been threatened. (*Id.* at p. 10.)

### **STANDARD OF REVIEW**

Plaintiff seeks to bring this action *in forma pauperis* under 42 U.S.C. § 1983. Under 28 U.S.C. § 1915(a)(1), the Court may authorize the filing of a civil lawsuit without the prepayment of fees if the plaintiff submits an affidavit that includes a statement of all of his assets and shows an inability to pay the filing fee and also includes a statement of the nature of the action which shows that he is entitled to redress. Even if the plaintiff proves indigence, the Court must dismiss the action if it is frivolous or malicious, or fails to state a claim upon which relief may be granted. 28 U.S.C. §§ 1915(e)(2)(B)(i)–(ii). Additionally, pursuant to 28 U.S.C. § 1915A, the Court must review a complaint in which a prisoner seeks redress from a governmental entity. Upon such screening, the Court must dismiss a complaint, or any portion thereof, that is frivolous or malicious, or fails to state a claim upon which relief may be granted or which seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b).

When reviewing a Complaint on an application to proceed *in forma pauperis*, the Court is guided by the instructions for pleading contained in the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 8 (“A pleading that states a claim for relief must contain [among other things] . . . a short and plain statement of the claim showing that the pleader is entitled to relief.”); Fed. R. Civ. P. 10 (requiring that claims be set forth in numbered paragraphs, each limited to a single set

of circumstances). Further, a claim is frivolous under Section 1915(e)(2)(B)(i) “if it is ‘without arguable merit either in law or fact.’” Napier v. Preslicka, 314 F.3d 528, 531 (11th Cir. 2002) (quoting Bilal v. Driver, 251 F.3d 1346, 1349 (11th Cir. 2001)).

Whether a complaint fails to state a claim under Section 1915(e)(2)(B)(ii) is governed by the same standard applicable to motions to dismiss under Federal Rule of Civil Procedure 12(b)(6). Thompson v. Rundle, 393 F. App’x 675, 678 (11th Cir. 2010). Under that standard, this Court must determine whether the complaint contains “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A plaintiff must assert “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not” suffice. Twombly, 550 U.S. at 555. Section 1915 also “accords judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint’s factual allegations and dismiss those claims whose factual contentions are clearly baseless.” Bilal, 251 F.3d at 1349 (quoting Neitzke v. Williams, 490 U.S. 319, 327 (1989)).

In its analysis, the Court will abide by the long-standing principle that the pleadings of unrepresented parties are held to a less stringent standard than those drafted by attorneys and, therefore, must be liberally construed. Haines v. Kerner, 404 U.S. 519, 520 (1972); Boxer X v. Harris, 437 F.3d 1107, 1110 (11th Cir. 2006) (“Pro se pleadings are held to a less stringent standard than pleadings drafted by attorneys.”) (emphasis omitted) (quoting Hughes v. Lott, 350 F.3d 1157, 1160 (11th Cir. 2003)). However, Plaintiff’s unrepresented status will not excuse mistakes regarding procedural rules. McNeil v. United States, 508 U.S. 106, 113 (1993) (“We have never suggested that procedural rules in ordinary civil litigation should be interpreted so as

to excuse mistakes by those who proceed without counsel.”). The requisite review of Plaintiff’s Complaint raises several doctrines of law which require the dismissal of the Complaint.

## **DISCUSSION**

### **I. Dismissal for Abuse of Judicial Process**

In his Complaint, Plaintiff indicates that he previously initiated only one lawsuit while incarcerated or detained. (Doc. 1, p. 2.) The form Complaint directly asks Plaintiff whether he has brought any lawsuits in federal court while incarcerated or detained in any facility. In response, he only disclosed Mullis v. Warren, et al., 1:2012-cv-1580 (N.D. Ga. Dismissed March 23, 2015). (Id. at pp. 2–3.) Plaintiff indicated that this case is still pending, but it has actually been dismissed. Moreover, the case management system shows that Plaintiff brought at least three other actions while he was incarcerated or detained: Mullis v. VanDyck, et al., 1:2009-cv-00927 (N.D. Ga. filed April 6, 2009); Mullis v. VanDyck, et al., 1:2009-cv-00928 (N.D. Ga. filed April 6, 2009); and Mullis v. Cobb County Board of Commissioners, et al., 1:2003-cv-3029 (N.D. Ga. filed October 2, 2003).

As previously stated, Section 1915 requires a court to dismiss a prisoner’s action if, at any time, the court determines that it is frivolous or malicious, fails to state a claim, or seeks relief from an immune defendant. 28 U.S.C. § 1915(e)(2)(B). Significantly, “[a] finding that the plaintiff engaged in bad faith litigiousness or manipulative tactics warrants dismissal” under Section 1915. Redmon v. Lake Cty. Sheriff’s Office, 414 F. App’x 221, 225 (11th Cir. 2011) (alteration in original) (quoting Attwood v. Singletary, 105 F.3d 610, 613 (11th Cir. 1997)). In addition, Federal Rule of Civil Procedure 11(c) permits a court to impose sanctions, including dismissal, for “knowingly fil[ing] a pleading that contains false contentions.” Id. at 225–26

(citing Fed. R. Civ. P. 11(c)). Again, although pro se pleadings are to be construed liberally, “a plaintiff’s pro se status will not excuse mistakes regarding procedural rules.” Id. at 226.

Relying on this authority, the Court of Appeals for the Eleventh Circuit has consistently upheld the dismissal of cases where a *pro se* prisoner plaintiff has failed to disclose his previous lawsuits as required on the face of the Section 1983 complaint form. See, e.g., Redmon, 414 F. App’x at 226 (*pro se* prisoner’s nondisclosure of prior litigation in Section 1983 complaint amounted to abuse of judicial process resulting in sanction of dismissal); Shelton v. Rohrs, 406 F. App’x 340, 341 (11th Cir. 2010) (same); Young v. Sec’y Fla. for Dep’t of Corr., 380 F. App’x 939, 941 (11th Cir. 2010) (same); Hood v. Tompkins, 197 F. App’x 818, 819 (11th Cir. 2006) (same). Even where the prisoner has later provided an explanation for his lack of candor, the Court has generally rejected the proffered reason as unpersuasive. See, e.g., Redmon, 414 F. App’x at 226 (“The district court did not abuse its discretion in concluding that Plaintiff’s explanation for his failure to disclose the Colorado lawsuit—that he misunderstood the form—did not excuse the misrepresentation and that dismissal was a proper sanction.”); Shelton, 406 F. App’x at 341 (“Even if [the plaintiff] did not have access to his materials, he would have known that he filed multiple previous lawsuits.”); Young, 380 F. App’x at 941 (finding that not having documents concerning prior litigation and not being able to pay for copies of same did not absolve prisoner plaintiff “of the requirement of disclosing, at a minimum, all of the information that was known to him”); Hood, 197 F. App’x at 819 (“The objections were considered, but the district court was correct to conclude that to allow [the plaintiff] to then acknowledge what he should have disclosed earlier would serve to overlook his abuse of the judicial process.”).

Another district court in this Circuit recently explained the importance of this information as follows:

[t]he inquiry concerning a prisoner's prior lawsuits is not a matter of idle curiosity, nor is it an effort to raise meaningless obstacles to a prisoner's access to the courts. Rather, the existence of prior litigation initiated by a prisoner is required in order for the Court to apply 28 U.S.C. § 1915(g) (the "three strikes rule" applicable to prisoners proceeding in forma pauperis). Additionally, it has been the Court's experience that a significant number of prisoner filings raise claims or issues that have already been decided adversely to the prisoner in prior litigation. . . . Identification of prior litigation frequently enables the Court to dispose of successive cases without further expenditure of finite judicial resources.

Brown v. Saintavil, No. 2:14-CV-599-FTM-29, 2014 WL 5780180, at \*3 (M.D. Fla. Nov. 5, 2014) (emphasis omitted).

As Plaintiff filed at least four prior lawsuits while detained, he misrepresented his litigation history in his Complaint. The plain language of the complaint form is clear—asking whether Plaintiff has "ever filed any lawsuit while incarcerated or detained." (Doc. 1, p. 2 (emphasis added).) Thus, regardless of the outcome of Plaintiff's prior lawsuits, his initiations of those lawsuits are the precise type of activity for which this prompt requires disclosure. Plaintiff failed to fully disclose the existence of three of his prior lawsuits, and he misrepresented the disposition of another. This constitutes a lack of candor that will not be tolerated in this Court.

Consequently, the Court should **DISMISS** this action for Plaintiff's failure to truthfully disclose his litigation history as required.

## **II. Dismissal of "Shotgun" Complaint**

Even if Plaintiff had not misrepresented his litigation history, his Complaint should be dismissed. In order to state a claim for relief under Section 1983, a plaintiff must satisfy two elements. First, a plaintiff must allege that an act or omission deprived him "of some right, privilege, or immunity secured by the Constitution or laws of the United States." Hale v. Tallapoosa Cty., 50 F.3d 1579, 1582 (11th Cir. 1995). Second, a plaintiff must allege that the act or omission was committed by "a person acting under color of state law." Id. While local

governments qualify as “persons” under Section 1983, state agencies and penal institutions are generally not considered legal entities subject to suit. See Grech v. Clayton Cty., 335 F.3d 1326, 1343 (11th Cir. 2003).

Additionally, Section 1983 liability must be based on something more than a defendant’s supervisory position or a theory of *respondeat superior*.<sup>1</sup> Bryant v. Jones, 575 F.3d 1281, 1299 (11th Cir. 2009); Braddy v. Fla. Dep’t of Labor & Emp’t Sec., 133 F.3d 797, 801 (11th Cir. 1998). A supervisor may be liable only through personal participation in the alleged constitutional violation or when there is a causal connection between the supervisor’s conduct and the alleged violations. Id. at 802. “To state a claim against a supervisory defendant, the plaintiff must allege (1) the supervisor’s personal involvement in the violation of his constitutional rights, (2) the existence of a custom or policy that resulted in deliberate indifference to the plaintiff’s constitutional rights, (3) facts supporting an inference that the supervisor directed the unlawful action or knowingly failed to prevent it, or (4) a history of widespread abuse that put the supervisor on notice of an alleged deprivation that he then failed to correct.” Barr v. Gee, 437 F. App’x 865, 875 (11th Cir. 2011).

Plaintiff’s Complaint includes a litany of unrelated claims and asserts that all Defendants are responsible for all of them. He does not specify how each Defendant allegedly violated his rights or provide factual support for the overwhelming majority of his claims. Rather, he attempts to cast a blanket indictment against Defendants with conclusory allegations. As to the majority of Defendants, including the Governor of the State of Georgia, the Commissioner of the Georgia Department of Corrections, and the Warden of Georgia State Prison, it appears that Plaintiff is seeking to hold them liable based on their supervisory position alone.

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<sup>1</sup> The principle that *respondeat superior* is not a cognizable theory of liability under Section 1983 holds true regardless of whether the entity sued is a state, municipality, or private corporation. Harvey v. Harvey, 949 F.2d 1127, 1129–30 (11th Cir. 1992).

Further, the Eleventh Circuit has routinely and explicitly condemned “shotgun pleadings,” Davis v. Coca-Cola Bottling Co. Consol., 516 F.3d 955, 979 n.54 (11th Cir. 2008), which it has described as pleadings that make it “virtually impossible to know which allegations of fact are intended to support which claim(s) for relief.” Strategic Income Fund, LLC v. Spear, Leeds & Kellogg Corp., 305 F.3d 1293, 1295 n.9 (11th Cir. 2002). A district court is not required to “sift through the facts presented and decide for itself which were material to the particular cause of action asserted.” Beckwith v. Bellsouth Telecomms. Inc., 146 F. App’x 368, 372 (11th Cir. 2005) (quoting Strategic Income Fund, 305 F.3d at 1295 n.9). Additionally, a plaintiff may not join unrelated claims and various defendants unless the claims “arise out of the same transaction, occurrence, or series of transactions or occurrences; and any question of law or fact common to all defendants will arise in the action.” Fed. R. Civ. P. 20(a).

Plaintiff’s Complaint is a quintessential “shotgun pleading” that fails to allege his claims with sufficient specificity and fails to explain how each defendant has violated his constitutional rights. Accordingly, the Court should not sift through his Complaint to assess what claims he intends to assert. Rather, the Court should **DISMISS** this action.

### **III. Denial of Leave to Appeal *In Forma Pauperis***

The Court should also deny Plaintiff leave to appeal *in forma pauperis*.<sup>2</sup> Though Plaintiff has, of course, not yet filed a notice of appeal, it would be appropriate to address these issues in the Court’s order of dismissal. Fed. R. App. P. 24(a)(3) (trial court may certify that appeal is not taken in good faith “before or after the notice of appeal is filed”).

An appeal cannot be taken *in forma pauperis* if the trial court certifies that the appeal is not taken in good faith. 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3). Good faith in this context must be judged by an objective standard. Busch v. Cty. of Volusia, 189 F.R.D. 687, 691

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<sup>2</sup> A certificate of appealability is not required in this Section 1983 action.



(M.D. Fla. 1999). A party does not proceed in good faith when he seeks to advance a frivolous claim or argument. See Coppedge v. United States, 369 U.S. 438, 445 (1962). A claim or argument is frivolous when it appears the factual allegations are clearly baseless or the legal theories are indisputably meritless. Neitzke v. Williams, 490 U.S. 319, 327 (1989); Carroll v. Gross, 984 F.2d 392, 393 (11th Cir. 1993). Or, stated another way, an *in forma pauperis* action is frivolous and, thus, not brought in good faith, if it is “without arguable merit either in law or fact.” Napier v. Preslicka, 314 F.3d 528, 531 (11th Cir. 2002); see also Brown v. United States, Nos. 407CV085, 403CR001, 2009 WL 307872, at \*1–2 (S.D. Ga. Feb. 9, 2009).

Based on the above analysis of Plaintiff’s action, there are no non-frivolous issues to raise on appeal, and an appeal would not be taken in good faith. Thus, the Court should **DENY** Plaintiff *in forma pauperis* status on appeal.

### CONCLUSION

For the numerous reasons set forth above, I **RECOMMEND** that the Court **DISMISS** this action **WITHOUT PREJUDICE** and **DENY** Plaintiff leave to appeal *in forma pauperis*.

Any party seeking to object to this Report and Recommendation is **ORDERED** to file specific written objections within fourteen (14) days of the date on which this Report and Recommendation is entered. Any objections asserting that the Magistrate Judge failed to address any contention raised in the Complaint must also be included. Failure to do so will bar any later challenge or review of the factual findings or legal conclusions of the Magistrate Judge. See 28 U.S.C. § 636(b)(1)(C); Thomas v. Arn, 474 U.S. 140 (1985). A copy of the objections must be served upon all other parties to the action. The filing of objections is not a proper vehicle through which to make new allegations or present additional evidence.

Upon receipt of Objections meeting the specificity requirement set out above, a United States District Judge will make a *de novo* determination of those portions of the report, proposed findings, or recommendation to which objection is made and may accept, reject, or modify in whole or in part, the findings or recommendations made by the Magistrate Judge. Objections not meeting the specificity requirement set out above will not be considered by a District Judge. A party may not appeal a Magistrate Judge's report and recommendation directly to the United States Court of Appeals for the Eleventh Circuit. Appeals may be made only from a final judgment entered by or at the direction of a District Judge. The Clerk of Court is **DIRECTED** to serve a copy of this Report and Recommendation upon the Plaintiff.

**SO ORDERED** and **REPORTED** and **RECOMMENDED**, this 8th day of September, 2016.



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R. STAN BAKER  
UNITED STATES MAGISTRATE JUDGE  
SOUTHERN DISTRICT OF GEORGIA